IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.54 of 1995
Date of decision:31.10.2006

The Commissioner of Income tax, Jalandhar

....Petitioner

versus

M/s. Prince Rubber Industries, Jalandhar.

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.
Mr. SK Mukhi, Advocate, for the respondent.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 23.12.1992 in ITA No.700(ASR)/ 1988, for the assessment year 1985-86:-

> "1. Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in holding the expenses on account of commission paid for sales promotion amounting to Rs.1,31,208/- are not to be taken into account for the purpose of disallowance under section 37 (3A) of the IT Act?
>
> 2. Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in deleting the addition of Rs.1,101,376/- made on account of violation of provisions of section 40A(3) of the IT Act?"

The assessee filed its return wherein claims were made under sections 37(3A) and 40A(3) of the Income tax Act, 1961 (for short, 'the Act') which were disallowed by the Assessing Officer but were allowed by the Commissioner of Income Tax (Appeals) and the Tribunal.

Learned counsel for the assessee points out that the matter is

covered by judgment of this Court in **Commissioner of Income-Tax v. Indo Asian Switchgears (P) Limited,** (2002) 257 ITR 645, holding that expenses on account of commission paid for sales promotion is not to be disallowed.

Learned counsel for the assessee also points out that as per Circular No.220(F.No.206/17/76-IT(A-II), dated 31.5.1977 issued by the department, the provisions of section 40A(3) of the Act did not apply if the purchaser or seller did not have a bank account at the place where transaction took place. The Tribunal has recorded a finding in para 6.2 of the impugned order, in the present case, that the case of the petitioner was covered by the instructions of the Board.

Learned counsel for the revenue has not been able to rebut the submission made on behalf of the assessee.

In the above circumstances, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 31, 2006 (Rajesh Bindal)
'gs' Judge